Chan Yuow Seng v Ling Ong Hua

HIGH COURT (TAIPING) — CIVIL SUIT NO 22–28 OF 1994
ABDUL MALIK ISHAK J
30 DECEMBER 1994

Civil Procedure *— Res judicata — Different cause of action and issues — Whether cause of action founded on same subject matter — Whether remedies sought the same*

The defendant's counsel raised the preliminary objection that this civil suit should not be heard as the matter had been adjudicated upon by the Ipoh High Court vide originating summons No 24–73–92 ('the Ipoh case') and relied on the doctrine of res judicata. Counsel alleged that in both the cases, the plaintiff was the same, the subject matter related to property held under HS(D) L & M 885/78, Lot PJ No 125, Mukim of Tupai, Larut Matang ('the land'), the cause of action concerned the question of trespass by the defendant and the relief sought was also similar, ie for vacant possession. On the other hand, counsel for the plaintiff argued that the cause of action and issues in the two cases were different, ie in the Ipoh case, the cause of action was grounded on trespass while in this case the cause of action was against a tenant holding over, as was decided by the judge in the Ipoh case, and the issue that the defendant was a tenant was not raised in the Ipoh case.

Held, dismissing the preliminary objection:

(1) The doctrine of res judicata means that a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or matter in litigation, and over the parties thereto, disposes once and for all of the matters decided, so that they cannot afterwards be raised for relitigation between the same parties or their privies.

(2) In this case, the plea of res judicata could not apply as the law to be applied in the present case was different from the law which was applied in the Ipoh case and the cause of action and the issues were also totally different. In the Ipoh case, the plaintiff had alleged that the defendant was a trespasser and denied that there was a tenancy agreement. Furthermore, the prayers sought in the Ipoh case were different from that of this case. Therefore, the defendant could not be said to be vexed twice for the same cause.

[Bahasa Malaysia summary

Peguambela bagi pihak defendan telah menimbulkan bantahan permulaan bahawa guaman sivil ini tidak seharusnya didengar kerana perkara ini telahpun diputuskan oleh Mahkamah Tinggi Ipoh melalui saman pemula No 24–73–92 ('kes Ipoh') dan bergantung pada doktrin

A res judicata. Peguambela itu mengatakan bahawa di dalam kedua-dua kes tersebut, plaintifnya adalah sama, isi perkaranya berkaitan dengan hartanah yang dipegang di bawah HS(D) L & M 885/78, Lot PJ No 125, Mukim Tupai, Larut Matang ('tanah itu'), kausa tindakannya berkenaan dengan soalan pencerobohan oleh defendan dan relief yang dipohon juga adalah sama, iaitu untuk milikan kosong. Sebaliknya, peguambela bagi pihak plaintif berhujah bahawa kausa tindakan dan isu-isu di dalam kedua-dua kes ini adalah berlainan, iaitu di dalam kes Ipoh, kausa tindakan berasaskan pencerobohan manakala di dalam kes ini, kausa tindakannya adalah terhadap seorang penyewa yang memegang selepas masa, seperti yang diputuskan oleh hakim di dalam kes Ipoh, dan isu bahawa defendan adalah seorang penyewa tidak ditimbulkan di dalam kes Ipoh.

Diputuskan, menolak bantahan permulaan itu:

(1) Doktrin res judicata bermakna bahawa suatu keputusan kehakiman yang muktamad yang diberikan oleh sesuatu tribunal kehakiman yang mempunyai bidang kuasa atas kausa atau perkara yang dilitigasikan, dan atas pihak-pihak yang terlibat di dalamnya, betul-betul menentukan semua perkara yang diputuskan itu, jadi mereka tidak lagi boleh ditimbulkan untuk dilitigasikan semula di antara pihak-pihak yang sama ataupun privi mereka.

(2) Di dalam kes ini, pli res judicata tidak boleh terpakai kerana undang-undang yang terpakai di dalam kes ini adalah berlainan daripada undang-undang yang terpakai di dalam kes Ipoh dan kausa tindakan serta isu-isu juga adalah berlainan sama sekali. Di dalam kes Ipoh, plaintif telah mengata bahawa defendan adalah seorang penceroboh dan menafikan bahawa terdapat suatu perjanjian penyewaan. Lagipun, permohonan di dalam kes Ipoh adalah berlainan daripada kes ini. Oleh yang demikian, defendan tidak boleh dikatakan telah disusahkan dua kali atas kausa yang sama.]

Notes

For cases on res judicata, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2892–2939.

Cases referred to

Blair v Curran (1939) 62 CLR 464 (refd)

Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2) [1967] 1 AC 853; [1966] 2 All ER 536; [1966] 3 WLR 125 (refd)

Lockyer v Ferryman (1877) 2 App Cas 519 (refd)

Loh Holdings Sdn Bhd v Peglin Development Sdn Bhd & Anor [1984] 2 MLJ 105 (refd)

Morrison, Rose & Partners v Hillman [1961] 2 QB 266; [1961] 2 All ER 891 (refd)

RS Mohamed Sultan v Liak Jee Song [1952] MLJ 171 (refd)

Legislation referred to

Rules of the High Court 1980 O 89

Manjit Singh Bhatt (*Manjit, Subra & Associates*) for the plaintiff.
SA Almeida (*Almeida & Co*) for the defendant.

Abdul Malik Ishak J: Mr SA Almeida submits on behalf of the defendant that this civil suit ('the Taiping case') should not be heard as the matter had been adjudicated upon by the Ipoh High Court vide originating summons No 24–73–92 ('the Ipoh case') and he relies on the doctrine of res judicata. Broadly stated this doctrine stems from English jurisdiction which means that a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or matter in litigation, and over the parties thereto, disposes once and for all of the matters decided, so that they cannot afterwards be raised for relitigation between the same parties or their privies. The effect of this doctrine is far reaching and can be appreciated from two angles. Firstly, the judicial decision estops or precludes any party to the litigation from disputing, against any other party thereto, in any later litigation, the correctness of the earlier decision in law and fact. Put bluntly, the same issue cannot be raised again between them, and this principle extends to all matters of law and fact which the judgment, decree or order necessarily established as the legal foundation or justification of the conclusion reached by the court (see the decision of Dixon J in *Blair v Curran* (1939) 62 CLR 464 (High Court of Australia) at p 531). Secondly, by virtue of the decision, the right or cause of action set up in the suit is extinguished, merging in the judgment which is pronounced. *Transit in rem judicatam*. There is only one result. It is this — no further claim may be made upon the same cause of action in any subsequent proceedings between the same parties or their privies (*Blair v Curran*).

Mr SA Almeida seeks to point out the similarities between the Taiping case and that of the Ipoh case. He points out that the plaintiff in both these cases is the same. He stresses that the defendant in the Taiping case was the second defendant in the Ipoh case and that there were two other defendants in the Ipoh case, viz the first defendant (Ho Beng Hai and Saw Cheng San) and the third defendant (semua penghuni-penghuni premis bernombor No 32 Jalan Venus, Taman Perak, Taiping, Perak). He lays stress and submits that the subject matter in both these cases are the same; it relates to a property held under HS(D) L & M 885/78, Lot PJ No 125 with a building erected thereon in the Mukim of Tupai in Larut Matang ('the land in question'). He submits further that the cause of action for both these cases revolves on the question of trespass by the defendant and that the relief sought was also similar — for vacant possession.

Mr Manjit Singh Bhatt submits on behalf of the plaintiff to the effect that the cause of action and the issues in these two cases are different. In the Ipoh case, the cause of action was grounded on trespass while in the Taiping case the cause of action is said to be against a tenant whose tenancy has been validly terminated by a notice dated 17 December 1992.

A It is germane at this juncture to examine these two cases at great length. In the Ipoh case, the plaintiff there applied for an order under O 89 of the Rules of the High Court 1980 ('RHC') and sought for the following prayers:

(a) satu perintah bahawa semua defendan-defendan perkhidmat atau ejen
B mereka dan semua orang yang menduduki tanah yang dikenali sebagai HS(A) L & M 885/78 Lot PT No 125, Mukim Tupai, Daerah Larut dan Matang, Negeri Perak dalam tempoh (7) tujuh hari dari tarikh penyampaian perintah mahkamah mulia ini dengan secara aman mengosongkan dan memberi pemilikan kosong tanah tersebut dan rumah di atas tanah tersebut kepada plaintif; dan

C (b) sekiranya berlaku keingkaran, bailif mahkamah mulia ini melaksanakan perintah ini selepas tujuh hari dari tarikh penyampaian perintah ini ke atas defendan-defendan.

It is also pertinent to point out that in the Ipoh case it was a proceeding filed as an originating summons and the parties thereto argued on the
D strength of the relevant affidavits filed therein. The basis for the plaintiff's application in the Ipoh case was clearly grounded on mere trespass but as the affidavits unfolded, there was evidence of a tenancy agreement between Saw Cheng San ('the landlord') and Ling Ong Hua ('the tenant') and this fact by itself would nullify an application under O 89 of the RHC. Mohtar Abdullah J (as he then was) who heard the Ipoh case in chambers rightly
E decided and refused to grant the prayers sought under O 89 of the RHC.

In the Taiping case, the plaintiff, who became the owner of the land in question through foreclosure proceedings by the bank, filed a civil suit and relied on the statement of claim filed therein. The defendant too, in the Taiping case, filed his statement of defence and counterclaim which
F was followed by the plaintiff's reply to the statement of defence and counterclaim. In the statement of claim, the plaintiff averred that he was the registered proprietor of the land in question whilst the defendant was a monthly tenant who paid a rental of RM120 per month; the plaintiff also averred that he had, through his counsel, sent an AR registered notice of
G termination of the tenancy which was posted on 17 December 1992 and that the defendant should give vacant possession on or before 31 January 1993; the plaintiff further averred that the defendant had failed to deliver vacant possession and he now sought for the following prayers:

(a) plaintif diberikan milikan kosong premis HS(D) L & M 885/78, Mukim
H Tupai, Daerah Larut dan Matang, Negeri Perak beralamat di No 32, Jalan Venus, Taman Perak, 34000 Taiping, Perak oleh defendan dan/ atau agen/pengkhidmat defendan yang menghuni di bawahnya dalam masa 14 hari dari tarikh perintah milikan kosong diserahkan ke atas defendan;

(b) dalam alternatifnya plaintif dibenarkan mengguna kekerasan munasabah
I (reasonable force) untuk memecah masuk dan mengambil milikan kosong daripada defendan dan/atau agen/pengkhidmat defendan yang menghuni di bawahnya jika perintah milikan kosong tidak dapat diserahkan ke atas defendan dalam masa 14 hari dari tarikh perintah milikan kosong;

(c) keuntungan 'mesne';

(d) dua kali sewa bulanan dari 1 Februari 1993 hingga 30 September 1993 dan masih berterusan di bawah s 28 Akta Undang-Undang Sivil 1956;

(e) faedah menurut Akta Undang-Undang Sivil 1956; dan

(f) kos.

Incidentally, Mr Manjit Singh Bhatt who appeared before the Ipoh High Court in the Ipoh case (see the order of the Ipoh High Court dated 21 November 1992 at encl 13) argues strenuously and points out that the issue that the second defendant (the sole and the same defendant in the Taiping case) is a tenant was not raised at all in the Ipoh case as the plaintiff had all along treated the second defendant as a trespasser. There is some merit to this argument as it is quite absurd for the plaintiff to raise the issue of tenancy in an application under O 89 of the RHC. In fact, the plaintiff in the Ipoh case denied that there was a tenancy agreement and held the view that the defendants were not 'tenants holding over'. This is clearly reflected in para 18 of the plaintiff's affidavit affirmed on 27 January 1992 and for convenience it is reproduced below:

> Saya menyatakan bahawa kesemua-semua defendan adalah penceroboh tanah tersebut dan tidak merupakan penghuni-penghuni tanah dan rumah tersebut melalui apa-apa perjanjian penyewaan atau lesen dan juga mereka menduduki di situ tanpa keizinan saya. Juga mereka tidak merupakan 'tenants holding over'.

It is apparent that the prayers sought in the Ipoh case are different from that of the Taiping case. The Taiping case sought for the use of reasonable force to gain entry on the land in question; it also sought for mense profits and twice monthly rentals at the stipulated period with the necessary interest and cost therein. Surely the plea of res judicata could not apply as the law to be applied in the Taiping case would be different from the law as applied in the Ipoh case (*RS Mohamed Sultan v Liak Jee Song* [1952] MLJ 171) and, if I may add, the cause of action and the issues too are totally different (*Loh Holdings Sdn Bhd v Peglin Development Sdn Bhd & Anor* [1984] 2 MLJ 105).

I am fully aware that the doctrine of res judicata is grounded on the theory that there must be an end to litigation and that this theory is grounded, firstly, on the general interest of the community in the termination of disputes and in the finality and conclusiveness of judicial decisions and, secondly, the right of the individual to be protected from vexatious multiplication of suits by an opponent whose superior wealth, resources and power may, unless curbed by estoppel, weigh down the judicially declared right of an individual. Put differently, and to borrow the words of Lord Blackburn in *Lockyer v Ferryman* (1877) 2 App Cas 519, HL [at p 530]:

> The object of the rule of res judicata is always put upon two grounds — the one public policy, that it is the interest of the State that there should be an end of litigation, and the other, the hardship on the individual, that he should be vexed twice for the same cause.

A See also *Morrison, Rose & Partners v Hillman* [1961] 2 QB 266; [1961] 2 All ER 891 and *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853 at p 909; [1966] 2 All ER 536 at p 549; [1966] 3 WLR 125 at p 139, HL.

Unfortunately for the defendant, the Taiping case bore a different
B cause of action from that of the Ipoh case and he therefore cannot be said to be 'vexed twice for the same cause'.

For the foregoing reasons, I dismissed the preliminary objection with costs and I ordered that the Taiping case be set for hearing on 22 February 1995 in the High Court of Taiping sitting in Kuala Kangsar.

C *Order accordingly.*

Reported by Anne Khoo

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